

ATTACHMENT J

Department or Agency Number: _____
 Agreement Routing Number: _____
 Billing Number: _____
 Agreement Number: CDS-000606-0090

**MASTER SERVICES AGREEMENT BETWEEN
 THE STATE OF COLORADO AND U S WEST COMMUNICATIONS, INC.**

This Master Services Agreement ("Agreement") is made this _____ day of _____, 2000, between the State of Colorado, acting by and through the Department of Personnel, General Support Services, Colorado Information Technology Services, Telecommunication Services, with offices at 690 Kipling, Lakewood, CO 80215, for the use and benefit of the state agencies and institutions, each of whom are referred to herein as the "State," and U S WEST Communications, Inc., a Colorado Corporation, with offices at 1801 California Street, Denver, CO 80202, hereinafter "U S WEST."

RECITALS

WHEREAS, the funds exist in the State's Law and Funds and have been budgeted, appropriated, and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Agreement in Fund Number _____, Appropriation Account _____, and Organization Code _____, for these telecommunication services.

WHEREAS, required approval, clearance and coordination have been accomplished from and with appropriate State agencies; and

WHEREAS, in consideration for the performance of said work and Services defined herein or in Attachment(s), Schedule(s) or Order(s), the State agrees to pay to U S WEST fees and charges specified in the Attachment(s) which are attached hereto and incorporated herein by this reference, and

WHEREAS, the procurement of these Services is authorized by the Colorado Procurement Code, and

WHEREAS, the State hereby warrants and represents that it has complied with the provisions of all applicable State of Colorado statutes, rules and regulations in order to enter into this Agreement, as defined herein below; and

WHEREAS, U S WEST wishes to provide telecommunications services to the State as described in the Scope of Work, below, and the State has a required need for such Services.

DEFINITIONS

The "State" is defined as the State of Colorado and as the individual State agencies and institutions within the State of Colorado ordering the Service(s) and/or Products identified in the Attachment(s), Schedule(s) and/or Order(s) to this Agreement.

"U S WEST" is defined as U S WEST Communications, Inc., its affiliates, subsidiaries, and subcontractors

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(including, but not limited to): CenturyTel, Eastern Slope Rural Telephone Association, and Phillips County Telephone Company.

"Conversion Plan" is defined as the plan to terminate all current agreements for services currently provided to the State by U S WEST and incorporate those services into this Agreement.

NOW THEREFORE, it is hereby agreed that in consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the State and U S WEST agree that the following terms and conditions shall apply:

1 SCOPE OF WORK.

2 Under this Agreement, U S WEST shall furnish and State shall pay for Service(s) as defined in the Attachment(s), Schedule(s) or Order(s). U S WEST shall provide Service(s) up to the Standard Network Interface ("SNI") at State's premises. The SNI is that location where U S WEST's protected network facilities end and State's inside wire or network begins. U S WEST provides Service in accordance with the applicable Tariff, Price List, and/or Catalog ("Tariff") which governs Service in the State, incorporated herein by this reference.

1.1 Orders

Orders for Service shall be placed according to the terms and conditions set forth in the Attachment(s), Schedule(s) or Order(s) to this Agreement. U S WEST may reject orders placed by the State that are outside the Scope of Work. Should an Order's term extend past the Term of this Agreement, the terms and conditions of this Agreement shall apply to such Order.

2.2 Change Orders

Should the State or U S WEST desire to alter any standards, specifications or the scope of the Services provided in any Attachment, Schedule or Order after it has been issued, the party wishing to make such modification shall notify the other party.

If the request for modification is made by the State, in the form of Exhibit A, attached and incorporated hereto, U S WEST shall research the effects of such modification on the project and shall advise the State not later than 30 days, unless U S WEST otherwise advises the State, of any changes in price, schedule and specifications which will result from the modification. If the State desires to proceed with the modification, the State and U S WEST shall execute a written change order. The change order shall modify the price, schedule and specifications provided in the applicable Attachment, Schedule or Order to the extent affected. U S WEST shall perform the Services as modified by such change order.

If the request for modification is made by U S WEST, U S WEST shall advise the State of any changes in price, schedule and specifications which will result from the modification. If the State desires to proceed with the modification, the State and U S WEST shall execute a written change order. The change order shall modify the price, schedule and specifications provided in the applicable Attachment, Schedule or Order to the extent affected.

In the event that a request for modification is rejected, the parties agree that the request for modification shall be immediately referred in writing to the Vice President and General Manager, Business and

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Government Solutions, for U S WEST and the Executive Director of the Department of Personnel for the State (or their respective successors) for consideration. U S WEST shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data Section of the Colorado State Procurement Rules. Any net reduction of Service covered under this Agreement may at the discretion of U S WEST be subject to the terms of Article 18 herein.

1.3 Intellectual Property Rights

Except for materials (including but not limited to software, reports or documents) prepared or developed exclusively for the State by U S WEST pursuant to this Agreement which shall be deemed to be a work made for hire, any software, reports, data, manuals, or other documents, drawings or materials ("Works") delivered or prepared by U S WEST in the performance of its obligations under this Agreement shall be subject to an irrevocable nonexclusive, perpetual, paid-up, transferable license to use, and permit others to use for State purposes, the software, reports, data, or other documents, drawings, or materials. The use rights described herein shall include but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the Works only for the express purposes stated under this Agreement.

1.4 Data and Document Deliverables

Unless otherwise specified, U S WEST shall deliver by the dates specified in the Attachment, Schedule or Order the data or documents required by such Attachment, Schedule or Order as well as any proposed by U S WEST. The delivered documentation will be sufficiently descriptive to enable maintenance troubleshooting of the telecommunication services consistent with the intended uses of the telecommunication services and software.

2. TERM

2.1 This Agreement will become effective upon the date noted herein and will be effective upon approval by the State Controller ("Commencement Date"), or designee, and shall continue for one (1) year from the Agreement Commencement Date, subject to termination as provided herein and availability of funds for payments due in subsequent fiscal years. This Agreement shall thereafter automatically renew for successive periods of one (1) year each unless a party gives written notice of its intention to terminate this Agreement at least one hundred and twenty (120) days before the end of any Term or this Agreement is terminated as provided herein. However, it is understood and agreed that any Service being provided under an Attachment, Schedule or Order will continue in full force and effect until completion of the term of the individual Attachment, Schedule or Order under the terms and conditions as stated in the Agreement and any relevant terms and conditions that survive the Attachment.

2.2 Fiscal Funding. U S WEST understands and agrees that this Agreement is contingent upon the continuing availability of funds as provided in the second paragraph of the Special Provisions hereinafter set forth, and that the State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. The State contracts to acquire by purchase the products and Services described in this Agreement and has reason to believe that sufficient funds will be available for the full term of the Agreement. Where, for reasons beyond the State's control, its funding entity does not allocate funds for any fiscal period beyond the one in which this Agreement is entered into, or beyond a succeeding fiscal period, the State has exhausted all efforts to obtain funds legally available for future fiscal periods, the State does not use non-allocation of funds as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party, and the State's failure to obtain funds does

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not result from any act or failure to act on the part of the State, this Agreement shall be terminated without penalty and the State will not be obligated to make the payments remaining beyond the State's then current fiscal period. The State shall notify U S WEST in writing of such non-allocation of funds as soon as the State shall reasonably know of such a non-allocation, and if possible, prior to the effective date of termination.

3. CHARGES AND BILLING.

3.1. U S WEST shall provide invoices in a form agreeable to the State. The State may require a detailed, monthly electronic summary billing and spreadsheet that may be sorted and extracted. Such billing may be provided in addition to or in place of hard copy invoices and in a format specified in the Attachment(s) for each Service.

3.2. The State agrees to pay the charges for Services as specified on the Attachment(s), Schedule(s) or Order(s). These charges do not include applicable taxes imposed by law. Where permitted by law, late payment charges shall be assessed according to Tariff, or law. Late charges shall not be assessed if a good faith dispute exists as to the State's obligation to pay all or a portion of the amount due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate. (Ref. Sec 24-30-202(24), C.R.S. as amended). The charges for Services under this Agreement, including any and all discounts to which the State may be entitled, will be offered and charged to the State independently from and regardless of the State's purchase of any customer premises equipment or enhanced services from U S WEST.

3.3. State law and regulations provide that U S WEST will be paid within forty-five (45) days after receipt of products or Services and a correct notice of amount due. A State liability not paid within forty-five (45) days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth (46th) day at the rate of one percent (1%) per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the State's obligation to pay all or a portion of the liability. The State shall pay U S WEST all undisputed amounts within forty-five (45) days after receipt of products or Service(s). U S WEST shall invoice the State separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate. (Ref. Sec 24-30-202(24), C.R.S. as amended).

The State's fiscal year is July 1st through June 30th.

4. **TAX EXEMPT STATUS.** It is hereby recognized and acknowledged by U S WEST that the State is tax-exempt and is not liable for any sales, use, excise, property or other taxes imposed by any federal, state or local government tax authority. The State's FEIN # is 84-730123K. The State's tax exemption number is 98-02585. The State is also not liable for any taxes of U S WEST for franchise or related to the income of U S WEST. No taxes of any kind shall be charged to the State.

5. DELIVERABLES

Deliverables shall be specified in the Attachment(s), Schedule(s) or Order(s) to this Agreement.

6. **INSPECTION.** The State reserves the right to inspect Services performed and products delivered under this Agreement by providing written notice to U S WEST. U S WEST shall have five (5) business days in which to respond to the State's request to inspect the Services and products. If the Services or products do not conform with the requirements described in this Agreement and the

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Attachment(s), Schedule(s) and Order(s), the State may reject nonconforming products or require U S WEST to perform the Services again in conformity with the requirements, with no additional payment.

7. ACCEPTANCE. The State shall have the right to accept nonconforming tender, or when defects in quality or quantity of Service cannot be corrected by a re-performance, the State may (1) require U S WEST to take necessary action to insure that future performance conforms with the Agreement requirements and (2) equitably reduce the payment due U S WEST to reflect the reduced value of the Services performed or nonconforming products accepted. These remedies in no way limit the other remedies available to the State in this Agreement and in the Attachment(s), Schedule(s) and Order(s) or remedies otherwise available at law or equity.

8. NO WARRANTIES. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. CONFIDENTIALITY. Subject to the State's Open Records Act (Title 24 Section 72, Subsection 101, C.R.S.), in the event either party or their employees obtain access to any confidential information, records or files of the other party in connection with the performance of the obligations under this Agreement or any order placed pursuant to this Agreement the parties shall keep such records, files, and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to both parties. "Confidential information, records or files" shall not mean information which either party has denominated in writing as not confidential; or information which at the time of disclosure is in the public domain or is independently acquired or developed other than by breach of this Agreement. Both parties shall notify their employees that they are subject to the confidentiality requirements set forth above.

10. LIMITATION OF LIABILITY.

Notwithstanding any other provision of this Agreement to the contrary, including, without limitation, Special Provision 4 Indemnification, the express remedies provided within this Agreement are the State's sole remedies for breach of any and all warranties and for U S WEST's liability arising from the products or Services provided hereunder. In no event shall U S WEST's contractual liability to the State for damages of any nature include incidental, indirect, special, or consequential damages of any kind including but not limited to any loss of use, loss of business, or loss of profit. Limitation of liability shall be separately stated in the applicable Attachment(s) for the provision of U S WEST Service(s). This limitation of liability provision, and any other limitation or exclusion of damages in this Agreement do not limit or exclude U S WEST's liability which directly arises from Article 12, Patent and Copyright Indemnification or for death or bodily injury or damage to tangible property arising out of performance of this Agreement and directly caused by U S WEST, its employees, agents, or subcontractors. Remedies under this Agreement, applicable Attachment, Schedule or Order are exclusive and limited to those expressly described in this Agreement, the applicable Attachment, Schedule or Order.

Each party shall be responsible for any actual physical damages it directly causes in the course of its performance under this Agreement, limited to damages resulting from personal injuries, death, or property damage arising from negligent acts or omissions. Each party shall self-insure its own property and shall be responsible for any damages caused by either party to such property.

Notwithstanding any other provisions of this Agreement, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-101 et seq, C.R.S.,

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as now or hereafter amended.

11. REMEDIES. In addition to any other remedies provided for in this Agreement and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if U S WEST substantially fails to satisfy the duties and obligations in the Agreement. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by U S WEST. These remedial actions are as follows:

11.1. Suspend U S WEST's performance pending necessary corrective action as specified by the State without U S WEST's entitlement to adjustment in price/cost or schedule; and/or

11.2. Withhold payment to U S WEST until the necessary Services or corrections in performance are completed per the specifications stated; and/or

11.3. Deny payment for Services which have not been performed or conforming products not delivered due to circumstances caused by U S WEST.

11.4. Terminate the Agreement for default.

The above remedies are cumulative.

12. PATENT AND COPYRIGHT INDEMNIFICATION. U S WEST will pay finally awarded costs and damages on the claim if: (1) U S WEST is notified promptly in writing by the State of any such claim, (2) U S WEST has control of the defense and settlement of the claim, and (3) the State cooperates with U S WEST in all respects to facilitate the settlement or defense of the claim. This indemnification does not apply to any infringement or claim of infringement: (a) arising from adherence to instructions or drawings which U S WEST has been directed by the State to follow; (b) which is not wholly inherent in the Service, products or software itself as furnished by U S WEST; or (c) which relates to combinations of U S WEST supplied Service, equipment with any other software or equipment. U S WEST will have the right, at its option and expense, to procure for the State the right to continue using the Service, products or software in the event of a claim of infringement, to replace or modify it so it becomes non-infringing, or to reimburse the State for the cost less depreciation for its use based on a straight-line depreciation schedule of seven (7) years.

13. LAWFULNESS. This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders.

14. LEGAL AUTHORITY. U S WEST warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind U S WEST to its terms. The person(s) executing this Agreement on behalf of U S WEST warrant(s) that such person(s) have full authorization to execute this Agreement.

15. SEVERABILITY. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of the Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

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16 COOPERATION OF THE PARTIES. U S WEST and the State agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this Agreement. In connection herewith, the parties shall meet to resolve problems associated with this Agreement. Disputes arising under this Agreement which cannot be settled through negotiations may be resolved through the procedures set forth in the Colorado Procurement Code, and any judicial proceedings relating to this Agreement in any way shall be brought in the District Court in and for the City and County of Denver.

17. HEALTH AND SAFETY COMPLIANCE.

17.1. U S WEST and the State will adhere to all applicable health, safety and environmental laws, rules and regulations, including the Occupational Safety and Health Administration's ("OSHA") and the Environmental Protection Agency's ("EPA") rules and regulations (collectively, "Safety Regulations"). Unless specified in the Agreement, U S WEST will not work in any area where a Hazardous Substance is present. "Hazardous Substance" means a substance regulated by any Safety Regulation and includes, but is not limited to, asbestos. U S WEST may work in an area containing non-friable asbestos if U S WEST determines in its sole judgment that the work will not disturb or cause the asbestos to become friable.

17.2. The State is responsible for informing U S WEST of the existence, location and condition of any Hazardous Substances that may be in or around the U S WEST work area.

17.3. U S WEST may, without affecting State's informational duties and indemnification, suspend work from the time it reasonably identifies areas where Hazardous Substances may be present until the work area is in compliance with then-constituted Safety Regulations. Any such suspension is not a default of the Agreement, and any delays from the suspension may result in a similar delay in work completion, without penalty to U S WEST. If the parties cannot agree whether U S WEST's work can be performed through completion without a violation of Safety Regulations, or cannot agree to payment of added costs, if any, either party may terminate the Agreement without penalty. Such termination shall not affect the State's obligation to pay for equipment, software and Services provided by U S WEST prior to the effective date of termination.

18. FORCE MAJEURE.

Neither U S WEST nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by force majeure. "Force majeure" means acts of God; acts of the public enemy; acts of the State and/or any governmental entity in its sovereign or contractual capacity; fires, floods, epidemics, quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather, or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, could not have been prevented by the party affected.

The existence of such causes of delay or failure shall extend the period for performance to such extent as may be necessary to enable the complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed. Nothing in this paragraph shall prevent the State from covering its requirements from another contractor during the period of delay.

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19. TERMINATION FOR DEFAULT/CAUSE.

a. **Default.** If U S WEST refuses or fails to timely perform any of the provisions of this Agreement, with such diligence as will ensure its completion within the time specified in this Agreement, the State may notify U S WEST in writing of the non-performance, and if not corrected, or documentation is not provided to the State evidencing U S WEST's curative measures and/or plan for correcting the default within forty-five (45) days from U S WEST's receipt of such writing, the State may terminate U S WEST's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. U S WEST shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar products or Services elsewhere.

b. **U S WEST's Duties.** Notwithstanding termination of the Agreement and subject to any directions from the State, U S WEST shall take timely, reasonable, and necessary action to protect and preserve property in the possession of U S WEST in which the State has an interest.

c. **Compensation.** Payment for completed Services and/or products delivered and accepted by the State shall be at the Agreement price. The State may reasonably withhold amounts due to U S WEST as the State deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar products and Services.

20. INSURANCE.

a. U S WEST shall obtain, and maintain during the term of this Agreement Insurance in the following kinds and amounts:

(i) Standard Workers' Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.

(ii) General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverage's:

(1) Combined single limit of \$600,000 written on an occurrence basis.

(2) Any aggregate limit will not be less than \$1,000,000.

(3) Combined single limit of \$600,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends three (3) years beyond the performance period of the Agreement.

(4) If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, U S WEST shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document to the State showing compliance with this provision.

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- b. The State of Colorado shall be named as an additional insured on each liability policy.
- c. The insurance shall include provisions preventing cancellation without sixty (60) days prior notice by certified mail to the State.
- d. U S WEST shall provide to the State certificates showing adequate insurance coverage within seven (7) working days of award or Agreement execution, unless otherwise provided.

21. INDEPENDENT CONTRACTOR RELATIONSHIP. U S WEST SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF THE STATE. NEITHER U S WEST NOR ANY AGENT OR EMPLOYEE OF U S WEST SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. U S WEST SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAXES AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THE AGREEMENT. U S WEST ACKNOWLEDGES THAT U S WEST AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS U S WEST OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. U S WEST SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY CONTRACTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. U S WEST SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE, IF REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF U S WEST ITS EMPLOYEES OR AGENTS.

22. LICENSES, PERMITS AND RESPONSIBILITIES. U S WEST certifies that, at the time of entering into this Agreement, it has currently in effect all necessary licenses, certifications, approvals, insurance and permits required to properly perform the Services of this Agreement. U S WEST warrants that it will maintain all necessary licenses, certifications, approvals, insurance and permits required to properly perform this Agreement without reimbursement by the State or other adjustment in the Agreement price. Additionally, all employees of U S WEST performing Services shall hold the required licenses or certification, if any, to perform their responsibilities. Any revocation, withdrawal or willful non-renewal of necessary licenses, certifications, approvals, insurance, and/or permits, required for U S WEST to properly perform this Agreement shall be grounds for termination of this Agreement for default.

23 ASSIGNMENT AND SUCCESSORS. U S WEST agrees not to assign rights or delegate duties under this Agreement (or subcontract any part of the performance required under the Agreement) without the express, written consent of the State, which shall not be unreasonably withheld. Except as herein otherwise provided this agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the Department of Personnel executing this Agreement. Such assignment shall not be deemed valid until receipt by such controller -- as distinguished from the State Controller -- and U S WEST assumes the risk that such written notice of assignment is received by the controller for the Department of Personnel. Notwithstanding the foregoing, U S WEST may assign this Agreement to a parent, subsidiary, successor or affiliated company without the consent of the State, however, U S WEST shall notify the State within thirty (30) business days of such assignment.

24. REPRESENTATIVES AND NOTICES.

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For the purpose of this Agreement, the individuals identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives:

State of Colorado
Attn: CITS Division Director
690 Kipling
Lakewood, CO 80215

U S WEST
Attn: State of Colorado Strategic Account Manager
1801 California, Room 1800
Denver, CO 80202

Authority. With respect to the representative for the State, such individual shall have the authority to inspect and reject services, approve invoices for payment, and otherwise act for the State, except with respect to the execution of formal amendments to or termination of this Agreement.

Notices. All notices required to be given by the parties hereunder shall be hand delivered or sent by U.S. mail to the individuals at the addresses set forth below. Either party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

State of Colorado
Attn: Telecommunications Contract Manager
690 Kipling
Lakewood, CO 80215

U S WEST
Attn: State of Colorado Strategic Account Manager
1801 California, Room 1800
Denver, CO 80202

Copy to:
U S WEST Legal Department
BGS Account Partner
Re: State of Colorado
1801 California Street, Suite 5100
Denver, CO 80202

25. WAIVER. The waiver of any breach of a term, provision, or requirement of the Agreement shall not be construed or deemed as waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

26. GOVERNING LAW. The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this Agreement. The venue for any judicial action relating to performance of this Agreement shall be in the City and County of Denver.

27. ENTIRE UNDERSTANDING. This Agreement constitutes the entire understanding between State and U S WEST. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

28. ORDER OF PRECEDENCE. In the event of conflicts or inconsistencies between this Agreement and its Exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

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- 1) Colorado Special Provisions, pages ____ to ____.
- 2) Orders and Change Orders.
- 3) Attachments to this Agreement
- 4) Agreement, pages ____ to ____.

29. **Colorado Special Provisions.** The following State Special Provisions are hereby incorporated and become a part of this Agreement:

SPECIAL PROVISIONS

CONTROLLER'S APPROVAL

1. This Agreement shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado or such assistant as he may designate. This provision is applicable to any agreement involving the payment of money by the State.

FUND AVAILABILITY

2. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

BOND REQUIREMENT

3. If this Agreement involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, U S WEST shall, before entering upon the performance of any such work included in this Agreement, duly execute and deliver to the State official who will sign the Agreement, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this Agreement. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the Agreement and in addition, shall provide that if U S WEST or its subcontractor fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by U S WEST or its subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of U S WEST arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in the lieu of a bond. This provision is in compliance with CRS 38-26-106.

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4. To the extent authorized by law, U S WEST shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by U S WEST, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Agreement.

DISCRIMINATION AND AFFIRMATIVE ACTION

5. U S WEST agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (CRS 24-34-402), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. Pursuant thereto, the following provisions shall be contained in all State contracts or sub-contracts.

During the performance of this Agreement, U S WEST agrees as follows:

(a) U S WEST will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. U S WEST will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer, recruitment or recruitment advertisements; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. U S WEST agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

(b) U S WEST will, in all solicitations or advertisements for employees placed by or on behalf of U S WEST, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

(c) U S WEST will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of U S WEST's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and of the rules, regulations, and relevant Orders of the Governor.

(d) U S WEST and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(e) A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment of work opportunity because of race, creed, color, sex, national origin, or ancestry.

(f) A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this Agreement to be discriminatory or obstruct or prevent any

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person from complying with the provisions of this Agreement or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this Agreement to be discriminatory.

g) In the event of U S WEST's non-compliance with the non-discrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and U S WEST may be declared ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations and orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.

(h) U S WEST will include the provisions of paragraphs (a) through (h) in every sub-contract and subcontractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, so that such provisions will be binding upon each subcontractor or vendor. U S WEST will take such action with respect to any sub-contracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event U S WEST becomes involved in, or is threatened with, litigation, with the subcontractor or vendor as a result of such direction by the contracting agency, U S WEST may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

COLORADO LABOR PREFERENCE

6a Provisions of CRS 8-17-101 & 102 for preference of Colorado labor are applicable to this Agreement if public works within the State are undertaken hereunder and are financed in whole or in part by State funds.

6b When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a non-resident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the non-resident bidder is a resident. If it is determined by the officer responsible for awarding the bid that compliance with this subsection .06 may cause denial of federal funds which would otherwise be available or would otherwise be inconsistent with requirements of Federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with Federal requirements (CRS 8-19-101 and 102).

GENERAL

7. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

8. At all times during the performance of this Agreement, U S WEST shall strictly adhere to all

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applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

9. Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

10. The signatories aver that they are familiar with CRS 18-6301, et. seq., (Bribery and Corrupt Influences) and CRS 18-6401, et. seq., (Abuse of Public Office), and that no violation of such provision is present.

11. The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first above written.

U S WEST:

(Full Legal Name)

Solomon D. Trujillo

Position (Title) CEO

84-027-3800

Social Security Number of Federal

I.D. Number

If Corporation

Attest (Seal)

By

Corporate Secretary, or Equivalent, Town/City/County Clerk

STATE OF COLORADO

BILL OWENS, GOVERNOR

EXECUTIVE DIRECTOR

DEPARTMENT OF

APPROVALS:

ATTORNEY GENERAL

By

ARTHUR L. BARNHART
STATE CONTROLLER

By

Exhibit A

Sample Bilateral Change Order Letter

Date: _____

State Fiscal Year 2000-2001

Bilateral Change Order Letter No. _____

In accordance with Paragraph _____ of contract routing number _____, AMA _____, between State of Colorado, General Support Services, Telecommunication Services and U S WEST covering the period of _____ through _____ the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Services/Supplies**Price/Cost**

The maximum amount payable by the State for _____ [service] [supply] _____ in Paragraph _____ is (Increased/decreased) by (\$ amount of change) to a new total of (\$ _____) based on the unit pricing schedule in accordance with the applicable service category submitted in the U S WEST's RFP Proposal which governs Service to the state. The first sentence in Paragraph _____ is hereby modified accordingly:

OR

The parties agree that the changes made herein are "no cost" changes and shall not be the basis for claims for adjustment to [price] [cost ceiling], delivery schedule, or other terms or conditions of the Agreement. The parties waive and release each other from any claims or demands for adjustment to the Agreement, including but not limited to price, cost, and schedule, whether based on costs of changed work or direct or indirect impacts on unchanged work. Controller approval of this "no cost" change is not required. _____ U S WEST initials. _____ Agency initials.

This change to the Agreement is intended to be effective as of _____, but, except with respect to "no cost" changes identified above, in no event shall it be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before _____ 19____.

U S WEST:

State of Colorado:
BILL OWENS, GOVERNOR

By: _____
Name _____
Title _____

By: _____
For the Executive Director
Colorado Department of _____

APPROVALS:

FOR THE STATE CONTROLLER

By: _____

By: _____

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For _____ Division

State Controller or Designee

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ATTACHMENT 1**TO THE MASTER SERVICES AGREEMENT
BETWEEN THE STATE OF COLORADO AND
U S WEST COMMUNICATIONS, INC.**

This Attachment 1 to the Master Services Agreement between The State of Colorado and U S WEST Communications, Inc. ("Agreement") is hereby attached and made a part of the Agreement. This Attachment 1 is subject to the terms and conditions of the Agreement. In the event of a conflict between the terms and conditions of this Attachment 1 and the terms and conditions of the Agreement, this Attachment 1 shall govern for the purposes of this Attachment only.

MNT SERVICES**1. SCOPE.**

- 1.1 Subject to the terms and conditions set forth in the Master Service Agreement and this Attachment 1 ("Attachment"), U S WEST shall engineer, provide, deliver, test and provide network configuration documentation regarding the State's Multi-Use Network, "MNT" to provide the telecommunications backbone network for the State and interfaces with the State "Edge/End Sites" in accordance with the schedule proposed in U S WEST's February 4, 2000 response and subsequent changes and clarifications to RFP#TK-00011-00, which is incorporated by this reference. ("Services").
- 1.2 The MNT shall provide an Asynchronous Transfer Mode (ATM) backbone infrastructure to connect 70 Service points or ANAP's throughout the entire state. This will be a public network on which the State shall be the anchor tenant. The completed MNT will be an outsourced, monitored and managed statewide network infrastructure, which may accommodate data, video, image and voice.
- 1.3 U S WEST shall provide the State with ATM Service ("ATM CRS") to all State defined Edge Sites as required in Attachment 5.4 of the RFP or as otherwise agreed to by the parties. Additional ATM CRS-based "Edge/End Sites" will be connected to the statewide network on an individual case basis, at the rates proposed in the RFP catalog pricing section. In accordance with the RFP, State sites connected to the MNT, ATM CRS network cloud within a 15 miles radius of the ANAP will not pay backhaul mileage charges.
- 1.4 U S WEST will provide the ATM CRS in accordance with U S WEST's Federal Communications Commission ("F.C.C.") Access Tariff No. 5. In the event of a conflict between the terms and conditions of this Attachment and the Tariff, the prevailing Tariff will govern.
- 1.5 The parties agree to review pricing at the end of the State's fiscal year, or as requested by the State, not to exceed two (2) times per year, for the duration of the term of the Attachment.

2. **CONVERSION PLAN.** All existing ATM and Frame Relay Service with Interworking over ATM, relevant to MNT and under contract between U S WEST and the State, shall be re-established on the MNT network at no additional cost or penalty to the State. Both parties shall establish an implementation plan for all existing circuits to create optimum traffic on the network as each ANAP becomes operational. U S WEST agrees to waive termination liability charges on services that are converted to the MNT network, under this Attachment. Tariff pricing shall be used for converting all other existing service to ATM CRS service under this Attachment.

3. **TERM.** This Attachment becomes effective subject to availability of funds, upon approval by the State Controller ("Effective Date"), or designee, and shall continue for five (5) years from the

Effective Date, subject to termination as provided in the Agreement and availability of funds for payments due in subsequent fiscal years.

4. **OPTIONS.** The State may require continued performance for a period of five (5) subsequent years in one (1) year increments of renewal ("Option") of the Services within the limits and at the rates specified within this Attachment. The State may exercise the Option by providing ninety (90) days written notice to U S WEST deposited in the U.S. Mail before the end of the term of the Attachment using a form substantially equivalent to Exhibit A attached and incorporated herein. The total duration of this Attachment, including the exercise of any Option(s) under this clause, shall not exceed ten (10) years from the Effective Date. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
5. **CHARGES AND BILLING.** U S WEST shall provide the State with monthly detailed billing in a mutually agreed upon electronic format so the information may be sorted and extracted. U S WEST shall present an integrated bill that includes the participating service providers for the MNT project. The electronic invoice shall interface with the ordering system, and accurately reflect the dates and charges the Service was transferred to the MNT electronic invoice billing. The existing final invoices for Services transferred shall reflect the corresponding dates and charges through the cutover date of the Service. Other electronic billings shall be proposed pursuant to the Change Order process stated in Section 1.2 of the Agreement.
6. **MNT NETWORK IMPLEMENTATION PHASE TIMETABLE.** The MNT Network shall be installed in three (3), one (1) year time periods. The dates for the time periods are:
 - Year one: Effective Date to June 30, 2001
 - Year two: July 1, 2001 to June 30, 2002
 - Year three: July 1, 2002 to June 30, 2003
7. **RESPONSIBILITIES OF U S WEST.**
 - 7.1 **Schedule.**

U S WEST shall develop and submit a Deployment Schedule ("Schedule") to the State that will incorporate all required areas of coverage, as specified in the RFP including: the implementation phase timetable, the Deliverable Implementation Schedule, Exhibit B attached and incorporated herein, a detailed project timetable, and network configurations as related to the State's private network. U S WEST shall also submit a final Schedule and MNT network configuration to the State for approval prior to phase work being initiated. Changes to the Schedule may be subject to change based upon agreement by the joint U S WEST and State MNT Project Teams.
 - 7.2 **MNT System Design and Performance Responsibility.**

U S WEST shall have responsibility for performance of the entire MNT, including but not limited to the system design, implementation in accordance with the proposed Schedule, and daily operational performance of the MNT. Acceptance shall be based upon requirements in the RFP, and the system acceptance plan developed by U S WEST and approved by the State, as required by Section 4.8.1.5 of the RFP.

U S WEST shall deliver the Service to its proper location at the cost proposed to the State.

U S WEST shall maintain and support the Service at no additional cost, for the full term of the Agreement and this Attachment, and any Option periods exercised by the State.

U S WEST has provided the State with MNT Points for Clarification, attached and incorporated herein as Exhibit C.

- 1.3 U S WEST shall propose to the State in writing any System Upgrades, revisions, updates or technology improvements ("Enhancements") that may be offered within thirty (30) days of the offer or release to the general public, throughout the remaining term of the Agreement and this Attachment. The State may accept such Enhancements, if desired, by the Change Order process specified in Section 1.2 in the Agreement.
- 1.4 The Parties agree to meet semi-annually, or more frequently, to discuss and review the State's network and the possible deployment and implementation of any new technologies and standards.
- 1.5 The Parties agree to meet on a semi-annual basis to discuss the Service and any associated Service Level Agreements.
- 1.6 U S WEST warrants that response times for Service outages will be governed by the terms specified in the RFP or as otherwise agreed upon by the parties.

8. ORDERS/WEB-BASED ORDERING SYSTEM

The State may submit orders for Service by accessing the Web-based ordering system provided by U S WEST for the State. The ordering system shall be accessible to State authorized representatives.

9. PERFORMANCE IMPORTANCE

The parties agree that time is of the essence for implementation of the Schedule. Subject to extensions of time pursuant to Force Majeure (Article 18 of the Agreement) or for reasons attributable to the fault of the State or other third parties, U S WEST will complete the Service implementation for the ANAP's by the dates specified in U S WEST's proposal. The parties shall implement a Conversion Plan for existing circuits to be re-established to the MNT network in concert with ANAP conversion. Failure to complete the milestones by the dates specified in the ANAP Deployment Schedule shall be grounds for termination for default, liquidated damages, and any other remedies available to the State.

10. LIMITATION OF LIABILITY

Notwithstanding any other provision of this Attachment to the contrary, including, without limitation, Special Provision 4, Indemnification, the express remedies provided within this Attachment are the State's sole remedies for breach of any and all warranties and for U S WEST's liability arising from the product or Services provided hereunder. In no event shall U S WEST's contractual liability to the State for damages of any nature include incidental, indirect, special, or consequential damages of any kind including but not limited to any loss of use, loss of business, or loss of profit. This limitation of liability provision, and any other limitation or exclusion of damages in this Attachment do not limit or exclude U S WEST's liability which directly arises from Article 12, Patent and Copyright Indemnification in the Agreement or for death or bodily injury or damage to tangible property arising out of performance of this Attachment and directly caused by U S WEST, its employees, agents, or subcontractors. Remedies under this Attachment are exclusive and limited to those expressly described in this Attachment.

Each party shall be responsible for any actual physical damages it directly causes in the course of its performance under this Attachment, limited to damages resulting from personal injuries, death, or property damage arising from negligent acts or omissions. Each party shall self-insure its own property and shall be responsible for any damages caused by either party to such property.

Notwithstanding any other provisions of this Attachment, no term or condition of this Attachment shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-101 et seq. C.R.S., as now or hereafter amended.

Excluding liquidated damages as provided in Article 11, in no event shall U S WEST's contractual liability to this State for damages of any nature include incidental, indirect, special or consequential damages of any kind including but not limited to any loss of use, loss of business, or loss of profit or exceed, in amount, a sum equivalent to the applicable credit for interruptions to Service under this Attachment, as it may be amended from time to time.

11. LIQUIDATED DAMAGES

- 11.1 If U S WEST is given notice of delay or nonperformance and fails to cure pursuant to Article 19.a. of the Agreement, in addition to any other damages that are applicable, U S WEST shall be liable for \$205.00 per ANAP per calendar day from 45 days from receipt of notice, until either the State reasonably obtains similar Services if U S WEST is terminated for default, or until U S WEST provides the Services if U S WEST is not terminated for default. The State shall make every reasonable effort to mitigate its damages. To the extent that U S WEST's delay or nonperformance is excused due to Force Majeure (Article 18 of the Agreement), the fault of the State or other third party, liquidated damages shall not be due the State. The parties agree that the damages from breach of the Agreement are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the State from late performance, including costs of additional inspection and oversight, lost opportunity for additional efficiencies that would have attended on-time completion of performance. Liquidated damages assessed shall reduce the then current invoice amount to be paid. Assessment of liquidated damages shall not be exclusive of or in any way limit remedies available to the State at law or equity for U S WEST breach. Liquidated damages paid to the State by U S WEST shall not exceed \$3,037,825 per year.

- 11.2 U S WEST shall not pay liquidated damages to the State for delays or nonperformance when such occurrences are due to U S WEST and/or their subcontractor's inability to obtain right of way permits.

12. Indefinite Delivery / Indefinite Quantity Attachment

A) This is an indefinite delivery, indefinite quantity agreement. The quantities and Services specified by the State provided End Site/Edge Site Schedule are estimates only and do not form a binding commitment on the part of the State. As the "minimum", this Attachment addresses the 70 ANAP sites as defined in Section 4.5.4 of the RFP. The State shall order at least the quantity of Services designated in the Schedule, as the minimum. U S WEST shall furnish to the State, when and if ordered, the Services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". Delivery or performance shall be made only as issued in accordance with the directions issued by the MNT Program Office.

B) Additional pricing discounts

Both parties will execute separate Attachments for ATM and Frame Relay service. The Attachments will be incorporated into this Agreement. The Attachments will detail rates for telecommunications services that will be applied monthly based on overall volume of service or equipment ordered by the State, minimum quantities of service or equipment orders, or any combination. The ANAP access charge will be reviewed for reduction and/or elimination on an annual basis beginning at the end of

the fourth year and every year thereafter.. following Agreement execution.

- 12.1 U S WEST shall provide web-based network performance reports detailing the network availability for each of the network ANAP's and Edge/End Sites that subscribe to Managed Data Services ("MDS"), on a monthly basis. Information in these reports include, but are not limited to network volume and performance, situations to watch, device reports and overall health of the network. These Performance Management Reports will provide the State a useful tool for detecting error conditions before they occur and for tracking SLA's. The preparation of reports in a timely manner shall be the responsibility of U S WEST and failure to comply may result in withholding or elimination of payment of funds and/or termination of the Agreement. ANAP's not meeting the required performance standards, specified in the RFP, shall be subject to the charges detailed in Article 11, Liquidated Damages, and or any other remedies available to the State.
- 12.2 Payment for Services will not be made until acceptance is made per the agreed upon ANAP acceptance criteria and in accordance with Articles 6 and 7 of the Agreement. ANAP charges shall commence following ANAP acceptance, and the installation and operation of at least one Edge/End Site to the State ANAP or the ANAP charge shall commence 30 days after an ANAP has been ready for service for which the State does not have any pending service orders.
- 12.3 **Risk of loss.** Unless otherwise provided in the order, U S WEST assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, government-furnished property or facilities upon its delivery or use by U S WEST. However, U S WEST is not responsible for reasonable wear and tear to property of the ordering entity or for government-furnished property properly consumed in performing the order.
13. Any change or amendments to this Attachment must first be approved by U S WEST and the State's MNT Project Manager.
14. **REPRESENTATIVES AND NOTICES.**

For the purpose of this Agreement, the individuals identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives:

State of Colorado
Attn: Project Director for MNT
690 Kipling
Lakewood, CO 80215

U S WEST
Attn: State of Colorado Strategic Account Manager
1801 California, Room 1800
Denver, CO 80202

Authority. With respect to the representative for the State, such individual shall have the authority to inspect and reject Services, approve invoices for payment, and otherwise act for the State, except with respect to the execution of formal amendments to or termination of this Agreement.

Notices. All notices required to be given by the parties hereunder shall be hand delivered or sent by U.S. mail to the individuals at the addresses set forth below. Either party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

State of Colorado
Attn: MNT Contract Manager
690 Kipling
Lakewood, CO 80215

U S WEST
Attn: State of Colorado Strategic Account Manager
1801 California, Room 1800
Denver, CO 80202

15. **Colorado Special Provisions.** The following State Special Provisions are hereby incorporated and become a part of this Attachment.

SPECIAL PROVISIONS

CONTROLLER'S APPROVAL

1. This Attachment shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado or such assistant as he may designate. This provision is applicable to any Attachment involving the payment of money by the State.

FUND AVAILABILITY

2. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

BOND REQUIREMENT

3. If this Attachment involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, U S WEST shall, before entering upon the performance of any such work included in this Attachment, duly execute and deliver to the State official who will sign the Attachment, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this Attachment. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the Attachment and in addition, shall provide that if U S WEST or its subcontractor fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by U S WEST or its subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of U S WEST arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in the lieu of a bond. This provision is in compliance with CRS 38-26-106.

INDEMNIFICATION

4. To the extent authorized by law, U S WEST shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by U S WEST, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Attachment.

DISCRIMINATION AND AFFIRMATIVE ACTION

5. U S WEST agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (CRS 24-34-402), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. Pursuant thereto, the following provisions shall be contained in all State contracts or sub-contracts.

During the performance of this Attachment, U S WEST agrees as follows:

(a) U S WEST will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. U S WEST will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer, recruitment or

recruitment advertisements; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. U S WEST agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

(b) U S WEST will, in all solicitations or advertisements for employees placed by or on behalf of U S WEST, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

(c) U S WEST will send to each labor union or representative of workers with which he has a collective bargaining Attachment or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of U S WEST's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and of the rules, regulations, and relevant Orders of the Governor.

(d) U S WEST and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(e) A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment of work opportunity because of race, creed, color, sex, national origin, or ancestry.

(f) A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this Attachment to be discriminatory or obstruct or prevent any person from complying with the provisions of this Attachment or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this Attachment to be discriminatory.

g) In the event of U S WEST's non-compliance with the non-discrimination clauses of this Attachment or with any of such rules, regulations, or orders, this Attachment may be canceled, terminated or suspended in whole or in part and U S WEST may be declared ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations and orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.

(h) U S WEST will include the provisions of paragraphs (a) through (h) in every sub-contract and subcontractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, so that such provisions will be binding upon each subcontractor or vendor. U S WEST will take such action with respect to any sub-contracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event U S WEST becomes involved in, or is threatened with, litigation, with the subcontractor or vendor as a result of such direction by the contracting agency, U S WEST may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

COLORADO LABOR PREFERENCE

8a. Provisions of CRS 8-17-101 & 102 for preference of Colorado labor are applicable to this Attachment

if public works within the State are undertaken hereunder and are financed in whole or in part by State funds.

6b. When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a non-resident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the non-resident bidder is a resident. If it is determined by the officer responsible for awarding the bid that compliance with this subsection .06 may cause denial of federal funds which would otherwise be available or would otherwise be inconsistent with requirements of Federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the money; or to eliminate the inconsistency with Federal requirements (CRS 8-19-101 and 102).

GENERAL

7. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Attachment. Any provision of this Attachment whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Attachment to the extent that the Attachment is capable of execution.

8. At all times during the performance of this Attachment, U S WEST shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

9. Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

10. The signatories aver that they are familiar with CRS 18-8301, et. seq., (Bribery and Corrupt Influences) and CRS 18-8-401, et. seq., (Abuse of Public Office), and that no violation of such provision is present.

11. The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein:

IN WITNESS WHEREOF, the parties hereto have executed this Attachment on the day first above written.

U S WEST:

(Full Legal Name)

Position (Title)

STATE OF COLORADO

BILL OWENS, GOVERNOR

EXECUTIVE DIRECTOR

DEPARTMENT OF

Federal I.D. Number:
If Corporation
Attest (Seal)

By
Corporate Secretary, or Equivalent,
Town/City/County Clerk

APPROVALS:

ATTORNEY GENERAL

STATE CONTROLLER

By

By

Date _____

Exhibit A**Sample Option Exercise Letter**

Date: _____

TO: [U S WEST]
[Address]

SUBJ: Option Exercise Letter

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between State of Colorado, General Support Services, Telecommunication Services and U S WEST covering the period of _____ through _____ the State hereby exercises the option for Year _____, based on the rates and pricing set forth in the Agreement.

As approved in the Agreement, if the final approved changes the State's financial obligation hereunder, an amended Open Exercise Letter must be executed. Upon proper execution, the amended Option Exercise Letter shall constitute notice to continue "MNT" system service for the next year. The maximum amount payable by the State for this Phase _____ is \$ _____. This Option Exercise Letter shall not be deemed valid until it has been approved by the State Controller or such assistant as he may designate.

State of Colorado:
BILL OWENS, GOVERNORFor the Executive Director
Colorado Department of Personnel_____
Title

APPROVALS:

FOR THE STATE CONTROLLER

By: _____
For _____ DivisionBy: _____
State Controller or Designee

Exhibit B

Deliverable Implementation Schedule

(see attached 3-page spreadsheet)

Exhibit C

MNT Points for Clarification

1. For purposes of identifying a State network inventory, U S WEST shall provide Network Maps software to the State of Colorado MNT project team, which may be installed on a maximum of two (2) user PCs. U S WEST shall install the software and provide user training following receipt of a signed nondisclosure agreement. The Network Maps software will assist the State in identifying State user sites and services currently installed.
2. The price to convert existing point-to-point service onto the MNT, ATM CRS network shall be at Tariff prices as presented in the U S WEST RFP response.
3. U S WEST shall notify the designated State MNT operations contact of any planned maintenance windows, which will be Service impacting, 10 business days in advance of the maintenance window. Occasionally, upgrades or changes may need to be done in a shorter timeframe in order to correct identified problems. Formal U S WEST processes relative to the implementation and notification processes are in development and shall be provided to the State at a later date.
4. Cell Delay Variation (CDV) settings in the U S WEST ATM network are generally chosen based upon the class-of-service. The State should expect to pay more for low latency service, Peak Cell (CBR) vs. Sustained Cell (VBR) CDV parameters were detailed in the Tech Publication included in the RFP response. U S WEST offers CDV settings up to 150 ms in our ATM network offerings. U S WEST will work with the State to come to an agreeable solution in this regard.
5. U S WEST has determined that UNI-4.0 would not be made available until after SVC's are offered. SVC's are targeted as a product offering in the 3rd Quarter of 2001.
6. To clarify RFP Item, 4.3.2.18, U S WEST intends to offer Inverse Multiplexing over ATM (IMA) in the 3rd Quarter of 2001.
7. To clarify RFP Item(s) 4.3.2.22 & 4.3.2.23, U S WEST plans to provide the ATM features as follows:
 - 4.3.2.22 - ATM - SS7 Interworking- A timeframe for this service has not yet been determined.
 - 4.3.2.23 - IMA - Customer available 3rd Quarter 2001
 - OC-12 UNI - Customer available 4th Quarter 2000
 - CES - Customer available 2nd Quarter 2001
 - Comprehensive SLA's have no specific timeframe established at this time.
 - Development work is being done for consideration as a product offering.
 - MPLS - Limited deployment in 3rd Quarter 2000
 - ABR - Customer available 4th Quarter 2000
8. USW's ATM network incorporates standards-based ATM switches that are compatible with other standards-based ATM switches. Cisco BPX 8800 ATM Switch Product Information and the U S WEST ATM Technical Publication have information regarding our support of ATM Forum Standards. The State may refer to the specific switch specifications from Cisco and the ATM Technical Publication (included in the RFP Response) for additional standards information. The U S WEST account team will arrange a meeting with the State MNT technical team and the U S WEST ATM engineering team as well as Cisco to discuss specific standards concerns.
9. U S WEST proposed the following process for the conversion of Edge/End Sites:

- ☐ U S WEST shall assist the State in performing an inventory of existing services deployed by ANAP.
 - ☐ Once the inventory is completed, U S WEST shall assist the State in determining if the Service to a location still makes sense or if the location would be better served by a newer technology.
 - ☐ Approximately 90 days prior to an ANAP being turned up, orders shall be submitted to U S WEST, by the State, and due dates will be assigned in relation to the ANAP turn up date proposed in the MNT Project Plan.
 - ☐ Once orders are in U S WEST's systems, the conversion process shall be turned over to the associated Project Manager for tracking and problem resolution.
10. U S WEST is willing to consider a short-term request for additional bandwidth for specific State applications on a case-by-case basis.
 11. To clarify U S WEST's response to RFP item, 4.7.1.2, the relationship between SNMP (Simple Network Management Protocol) and MIB's (Management Information Base) is as follows: SNMP is the protocol for managing nodes on the network and is used to communicate with the network hardware. MIB's are the set of parameters an SNMP management station can query or set in the SNMP agent of a networked device (e.g. router).
 12. U S WEST cannot allow the State to monitor its public ATM switches with the State's network management platform. However, via U S WEST's MDS, the State will be able to monitor its network status.
 13. U S WEST ATM CRS product management will meet with the State to discuss the MNT SLA objectives. The Defined SLAs shall be agreed upon prior to acceptance of the first ANAP.
 14. U S WEST and the State MNT Project Team agree to meet regularly, not less than bi-weekly, for the term of the implementation of the MNT.

NORTHERN LATA					
DNVRBB4	Durango DURNCOMABB0	12/15/00	3/1/01	1	
DNVRBB2	Cortez	12/15/00	4/30/01		1
	Dove Creek	P2	6/15/01		1
	Pagosa Springs	P2	8/31/01		1
DNVRBB4	Montrose VTRSCOMABB0	9/29/00	10/2/00	1	
DNVRBB2		9/29/00			
	Ouray	9/29/00	12/1/01		1
	Telluride	9/29/00	11/15/01		1
	Lake City	P3	5/31/02		1
	Silverton	P3	12/15/02		1
DNVRBB2	Grand Junction GDJTCOMABB1	9/1/00	existing		
BLDRBB3	Delta	9/29/00	12/15/00		1
DNVRBB4	Glenwood Springs GLSPCOMABB0	11/1/00	11/1/00	1	
DNVRBB2	Rifle	11/1/00	3/15/01		1
		P2			
	Aspen	11/1/00	11/15/00		1
	Craig	P2	7/16/01		1
	Steamboat	P2	6/15/01		1
DNVRBB4	Vail VAILCOMABB0	12/1/00	10/1/00	1	
BLDRBB3	Eagle	12/1/00	2/1/01		1
	Breckenridge	12/1/00	2/1/01		1
		P3			
	Denver DINVRMACOBB4	9/1/00	9/1/00	1	
	Walden	P3	12/15/02		1
	Hot Sulpher Springs	P2	7/16/01		1
	Leadville	P3	12/15/01		1
	Georgetown	12/1/00	2/15/01		1
	Boulder		existing		
	Central City	9/29/00	12/15/00		1
	Denver Dr. Creek		existing		
	Castle Rock	11/1/00	1/15/01		1
	Kiowa	11/1/00	4/16/01		1
DNVRBB4	Fort Morgan FTMRCOMABB0	9/29/00	12/1/00	1	
BLDRBB3	Sterling	9/29/00	3/15/01		1
		12/15/00			
	Holyoke	9/29/00	11/15/00		1
	Akron	9/29/00	12/15/00		1
	Wray	9/29/00	12/15/00		1
	Total Northern			6	21 8

PUBL	Colorado Springs	CLSPCOMABB0	9/1/00	existing	1		
WLBG		Limón	P2	5/15/01		1	
		Cheyenne Wells	P2	12/1/01			1
		Burlington	P2	12/15/01			1
		Hugo	P3	5/15/01			1
		Eads	P3	6/1/01			1
		Cripple Creek (may be Pueblo i	P3	10/15/01		1	
CLSP	Pueblo	PUBLCOMABB0	9/29/00	existing	1		
WLBG		Canon City	9/29/00	1/15/01		1	
		Westcliffe	9/29/00	2/15/01			1
		Ordway	9/29/00	12/1/00			1
		La Junta	9/29/00	12/1/00			1
		Las Animas	9/29/00	1/15/01			1
		Lamar	9/29/00	1/15/01			1
		Springfield	9/29/00	1/1/01			1
PUBL	Walsenburg	WLBGCOMA	P2	2/15/01	1		
CLSP		Trinidad	P2	6/15/01		1	
			P2			1	
		Antonito	P2	4/30/02			1
		San Luis	P2	4/30/02			1
			P2			1	
		Creede	P3	6/14/02			1
		Saguache	P3	7/1/02			1
			P3			1	
			P3			1	
					3	8	14

Total North	6	21	8
Total South	3	8	14
Total	9	29	22

USW

ILEC

6-5 Change from original: Swapped Ft Morgan and Vail

Moved Leadville to 12/15/01 from 11/1/01; change of LATA only for EAS; renege with FCC for Prvt Line

Moved Durango to 3/1/01 from 1/15/01; Pathnet fiber RFS November 2000 but having ROW problems

Moved Canon City to 1/15/01 from 11/15/00; RFS on IOF job will be 12/1/00

Moved Ouray to 12/1/01 from 9/15/01; RFS on fiber OSP job will be 10/1/01

Moved Silverton and Walden to 12/15/02 from 8/15/02; both extensive fiber placement